

Application No. 10/047,545
Amendment dated January 27, 2006

REMARKS

Applicant amended claims 154, 181, and 182, and added new claims 195-218 to further define Applicant's claimed invention.

In the Office Action, the Examiner rejected claims 154-166 and 169-194 under 35 U.S.C. § 102(e) as being anticipated by Zdeblick et al. ("Zdeblick"). Applicant respectfully traverses the Examiner's rejection. Independent claim 154 recites a spinal fusion implant having a leading end for insertion first into the disc space, at least one truncated side, and a thread, "said at least one truncated side having a truncated portion between said thread and said leading end." Under the "Response to Arguments" section of the Office Action, the Examiner contends that "[t]he entire implant has threads on it and the entire implant is truncated." (Office Action, page 2, paragraph 3). Applicant respectfully disagrees with the Examiner's contention. Zdeblick teaches a fusion device 10 having a body 11 with truncated sidewalls that "extend from the anterior end 12 of the device up to the complete threads 19 at the posterior end 13." (Zdeblick col. 6, lines 18-20; Fig. 2 (emphasis added)). The portion between thread 19 and the leading end of the fusion device of Zdeblick is not truncated. (See Zdeblick, Figs. 2 and 8). Accordingly, Applicant submits that independent claim 154 is allowable over Zdeblick and that dependent claims 155-166 are allowable at least due to their dependency from an allowable independent claim, or claims dependent therefrom.

Independent claim 169 recites a spinal fusion implant having a body having a substantially cylindrical configuration, at least one truncated side, and a thread for engaging said implant to the adjacent vertebral bodies of the spine, "the locus of said thread forming a substantially cylindrical configuration." The locus of threads 18 and 19 of the Zdeblick fusion device do not form a substantially cylindrical configuration. (See, e.g., Zdeblick, Fig. 3). Accordingly, Applicant submits that independent claim 169 is patentable over Zdeblick and that dependent claims 170-194 are allowable at least due to their dependency from an allowable independent claim, or claims dependent

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therefrom. Applicant submits that the rejection under 35 U.S.C. § 102(e) has been overcome.

New independent claim 195 recites a spinal fusion implant having a thread with "a thread height measured from said body, said thread height being variable along more than one turn of said thread about the mid-longitudinal axis of said body." Zdeblick does not teach or suggest an implant with a thread height as recited in independent claim 195 of Applicant's claimed invention.

Applicant submits that independent claims 154, 169, and 195 are patentable and that dependent claims 155-166, 168, 170-194, and 196-218 dependent from one of independent claims 154, 169, and 195, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

In view of the foregoing remarks, it is respectfully submitted that the claims are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the preceding comments.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-3726.

Respectfully submitted,

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